Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the Matter of	)	
	)	
Implementation of Section 621(a)(1) of the Cable	)	
Communications Policy Act of 1984 as amended	)	**MB Docket No. 05-311**
by the Cable Television Consumer Protection and	)	
Competition Act of 1992	)	

DECLARATION OF FELIX BOCCUCCI, JR.
VICE PRESIDENT BUSINESS DEVELOPMENT
KNOLOGY, INC.

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SENIOR VICE PRESIDENT BUSINESS DEVELOPMENT
KNOLOGY, INC.

I, Felix Boccucci, Jr. do hereby declare, under penalty of perjury, that the following is true and correct to the best of my knowledge:

1. My name is Felix Boccucci, Jr. I am Vice President, Business Development at Knology, Inc. ("Knology"). My business address is 1241 O.G. Skinner Drive, West Point, GA 31833.

2. Knology is a fully integrated provider of video, voice, and data and advanced communications services to residential and business customers in nine markets in the southeastern United States. These include: Huntsville and Montgomery, Alabama; Panama City and a portion of Pinellas County, Florida; Augusta, Columbus, and West Point, Georgia; Charleston, South Carolina; and Knoxville, Tennessee. In each of these markets, Knology competes against incumbent cable and telephone entities.

3. Knology's general network topology is hybrid fiber-coax, although it has constructed a fiber-to-the-curb network in Knoxville. All video and data services are provided

over Knology's network. For voice services, most are provided over our own network, and a minimal amount is provided off-net.

4. Knology's networks pass 955,497 homes, of which 747,776 are considered marketable (without exclusive arrangements). As of September 30, 2005, Knology had 175,294 video connections, almost 150,000 voice connections, and over 100,000 data connections.

5. In my capacity as Vice President, Business Development and in previous positions, I have overseen all activities related to Knology's efforts to obtain cable television franchises. These activities began in 1995, and today, Knology has over 70 franchises. Of these, over 50 were obtained by applying for initial franchises, and the remainder was obtained when we acquired other companies.

6. In my experience, the nature of the franchise process differs greatly depending on the community. In most major markets, the process is time-consuming, laborious, and expensive. This is due to the fact that these municipalities have greater resources to expend, more political and government entities and community groups that become involved and an incumbent cable operator with more at stake. In many smaller communities, because they have fewer competitive service choices, Knology's entry was welcomed, and the processes moved quicker with few onerous provisions included in the agreements.

7. From a new entrant's standpoint, there are many franchise provisions or processes resulting in entry being delayed or deployment slowed. I will highlight some of them.

8. The first barrier is the so-called "parity" or "level playing field" ("LPF") provision, which requires the new entrant to accept all of the responsibilities and obligations of the incumbent cable operator. This provision is more aptly called the "anti-competition"

provision. Its superficial appeal to fairness masks the real intent: to protect the incumbent's market position. No new entrant – without any market share – can be viable if it must undertake the same responsibilities and obligations of an incumbent with market power.

9. As part of the "parity" mentality, municipalities frequently consult with the incumbent cable operator about the terms of the new entrant's franchise agreement. This can only be viewed as per se anticompetitive.

10. Another onerous provision is the requirement that the new entrants construct its network to the same locations and in the same amount of time as the incumbent did originally. This is the so-called "buildout" requirement. The incumbent's construction, however, was a "typical greenfield" build without any other cable provider in the market. In contrast, the new entrant cannot expect to obtain the same degree of market penetration in the same amount of time. Adhering to the same buildout requirements is economic suicide and creates significant financing issues since investors require a fair rate of return on their investment. The majority of Knology's franchise require the buildout of the same franchise area as the incumbent rather than allowing the new applicant to define its own franchise area (without income-based redlining). This creates undue economic burden because in some areas, for example, the density of residences is low enough that you cannot justify the additional capital investment to build in those areas and compete with the incumbent.

11. The very time it takes to obtain a franchise also can be a barrier to entry. There is no reason the process cannot be completed within four months at most. That was Knology's experience in many smaller markets. When the process is extended beyond this amount of time, the cost of entry increases significantly.

12. A short term of duration for the franchise also amounts to an unfair burden. Given the time required to construct a network plant and then take market share from the incumbent, a term of ten years or less is a deterrent to entering a market.

13. Finally, there are all the requirements outside the statute that are imposed on new entrants. These range from grants to education or government entities to special fees. Often, Knology was required to pay these fees upon entering into the franchise agreement, rather than having them distributed as the network was constructed and customers acquired.

14. Any one of these barriers has the affect of slowing entry, and they may even halt entry entirely, especially when they occur in combination. To gain greater insight into these barriers, I will provide examples of several of Knology's efforts to obtain franchises.

15. Knology approached the City of Louisville, Kentucky in early 2000 and applied to obtain a cable television franchise. Knology believed this market to be an excellent opportunity because it believed the incumbent provider's (Insight's) network and operations lagged behind industry norm. If it could enter quickly on competitively favorable terms, it believed it could, by offering more services at better prices, capture a large share of the customer base.

16. The initial informal discussions with the city were promising, but, because the incumbent cable provider's agreement had a LPF provision, the negotiations quickly became much more complicated. The city was particularly concerned that it would be sued by Insight, which would be a costly distraction.

17. Because of the LPF provision, the city sought to draft an agreement as identical as possible to the incumbent's. Each time a new draft was produced, the city would

share it with the incumbent. Each time the incumbent would respond with another set of revisions.

18. Four issues were most prominent. First Insight was required to pay the city $500,000 in five annual installments as part of a settlement arising out of the overcharging of cable customers in the 1980s. As part of the settlement agreement, however, this obligation was also incorporated into Insight's cable franchise. Insight insisted that Knology be required to make the same payments so its franchise would not be "more beneficial" than Insight's. Knology accede to this blatantly unfair demand it had no revenues at all in the 1980s, let alone revenues from customers it had overcharged in order to get a franchise. Knology was to make its first payment at the moment the franchise was granted despite the fact that Knology had neither network nor revenue at that point. Second, Knology sought a 15 year franchise, which was the same duration as the initial franchise of the cable operator that was acquired by Insight. The incumbent argued that the term of the franchise should be 10 years, the same term in its renewed franchise agreement. Third, Insight argued that it was able to rebuild the previous cable operator's network in 15 months, and Knology, despite being a new entrant, should have a similar requirement. Insight also argued that Knology should have additional bonding requirements to cover any cable cuts and should suffer severe penalties if it did not meet the buildout requirements. (Neither of these requirements were in Insight's agreement.) Fourth, Insight alleged Knology was not financially fit, which resulted in the city hiring a consultant to review Knology's financial wherewithal.

19. Because these issues were so contentious, the process dragged on. It was not until September, 2000 that the city approved the franchise by a vote of 7-5. This, however and most unfortunately, was not the end of the process. Insight's agreement permitted it to delay

the implementation of any new franchise until all appeals to the highest court in the state were completed. Thus, began another round of delay as Insight took the city's decision to court.

20. These delays enabled Insight to upgrade its network, improve its operations, and enter into exclusive agreements with owners of multiple development units. As a result, Knology's market opportunity evaporated, and it never entered the Louisville market.

21. In March, 2000, Knology applied for a cable television franchise in the greater Nashville, Tennessee area (Davidson County). Here too, the franchising process proved to be lengthy, laborious, and expensive. It was not until October, 2000 that the franchise was approved and Knology had spent approximately $500,000 in the process.

22. Once again, a LPF provision was at the heart of the problem. Knology had to agree to the incumbent's obligations without having the incumbent's market power. For instance, it was required to obtain exorbitantly priced letters of credit and make excessive grants putatively for PEG activities including an initial PEG grant payment of $266,000 at the time of the grant of the franchise. The total PEG grant requirement over the 15 year franchise term equated to an enormous $1.9 million financial burden. Knology agreed to these requirements because it had no choice if it wanted to operate in Nashville.

23. In contrast to these experiences, Knology had better experiences with franchising authorities in smaller markets, including Autauga County, Prattville, Montgomery County (all in Alabama), and Cedar Grove, Florida. These markets were hungry for competitive choices. Consequently, the process was quicker with Knology obtaining a franchise in most instances in less than 6 months. LPF and buildout requirements were either non-existent or less burdensome. Knology operates successfully in these markets today.

24. In sum, the local franchising process badly needs reform. It is anti-competition and anti-consumer, depriving residents and businesses of the benefits of robust cable competition and hampering the deployment of advanced networks. If LFAs are restrained from insisting on unreasonable requirements unsuitable for new competitors and imposing burdensome financial requirements and required to act on franchise applications in a suitably short time, competitive providers of cable service and advanced broadband services such as Knology, could enter the marketplace quicker and more effectively to the benefit of consumers. Indeed, in 2004 the General Accounting Office concluded that rates for cable services were 15 to 41% lower in markets where a Broadband Service Provider offered services in competition with an incumbent cable provider. Wire Based Competition Benefited Consumers in Selected Markets, GAO-04-241 (February, 2004). For example, today in portions of Pinellas County, Florida, Knology competes with Bright House, the incumbent cable provider. In those areas where Knology competes with Bright House, Bright House's expanded basic service rate is $10 to $15 lower than in those areas of the county where Bright House faces no competition from another franchisee. Policymakers should address these problems immediately.

This concludes my declaration.

Felix Boccucci, Jr.

Felix Boccucci, Jr.

Dated: Feb 10, 2006